

ARIZONA SUPREME COURT
Child Support Guidelines Review Committee
MEETING MINUTES
May 29, 2009
State Courts Building, Phoenix, Arizona

MEMBERS PRESENT:

Hon. Rebecca Albrecht
Mr. Robert L. Barrasso
Hon. Bruce R. Cohen, Chair
Ms. Helen Davis
Prof. Ira Ellman
Ms. Kim Gillespie
Ms. Cele Hancock
Mr. David Horowitz
Comm. Rhonda Repp
Hon. Michala Ruechel
Hon. Sarah Simmons
Hon. Kevin White - telephonically

STAFF:

Ms. Kathy Sekardi
Ms. Lorraine Nevarez

PRESENT:

Ms. Tara Ellman

CALL TO ORDER

Judge Cohen, Chair, called the meeting to order at 10:10 a.m. Judge Cohen welcomed the members and reviewed the meeting materials. Judge Cohen made three announcements:

1. The Chief Justice signed an Administrative Order extending the committee to December 2009.
2. Judge Cohen reported that he presented the draft guidelines to the Committee on Superior Court (COSC) on May 15, 2009. COSC members appeared supportive of the reorganization of the guidelines. COSC established an ad-hoc workgroup that will review the "Draft Final Report and Recommendations" and offer comments, input and feedback to the GRC prior to the September COSC meeting. Additionally, they will assist the GRC with disseminating the report and directing stakeholders to the GRC comments website.
3. A presentation will be made to Arizona Judicial Council (AJC) on June 17, 2009.

Judge Cohen discussed creating a highlights page from Professor Ira Ellman's report to share with stakeholders. Committee member David Horowitz agreed to develop a highlights page of the report.

The committee also discussed other ways to conduct outreach.

APPROVAL OF THE MINUTES

MOTION: To approve the April 24, 2009 minutes. Motion was seconded and unanimously approved without modification.

DISCUSS JUDGE NORMAN DAVIS' COMMENTS

Discussion was tabled.

DISCUSS NEW CALCULATOR

Janet Sell, Attorney General's Office, discussed concerns resulting from using the childcare costs adjustments that are being considered in the proposed child support guidelines. Using the proposed guidelines method seems to generate higher child support amounts.

The committee discussed many scenarios with different calculations and decided more discussion was needed to fully examine the childcare issue, especially in those circumstances where there is a large disparity between parents' incomes. The committee decided to retain the current method being used for allocating childcare costs while the proposed guidelines are being vetted within the community.

DISCUSS SELF-SUPPORT RESERVE

Discussion was tabled.

ENGEL v. LANDMAN

Discussion was tabled.

DISCUSS AND REVIEW ALL SECTIONS IN DRAFT GUIDELINE

It was suggested that a paragraph should be included in the beginning of the guidelines which outline the method used to calculate child support.

MOTION: To adopt the amended "Purposes" section. Motion was seconded and unanimously approved.

MOTION: To adopt Section II, Determination of Guidelines Support Obligation, sections A, B, C(2), C(3), and D1. Motion seconded and approved.

MOTION: To adopt Section II, Determination of Guidelines Support Obligation, sections E, F, and G. Motion seconded and approved.

(Proposed Guidelines Legend: Current proposed changes in blue font. Previous changes in red font.)

The Committee reviewed the draft guidelines and made the following changes:

I. General Information

~~**BACKGROUND:** The Arizona Child Support Guidelines follow the Income Shares Model. The model was developed by the Child Support Guidelines Project of the National Center for State Courts. The total child support amount approximates the amount that would have been spent on the children if the parents and children were living together. Each parent contributes his/her proportionate share of the total child support amount.~~

~~Information regarding development of the guidelines, including economic data and assumptions upon which the Schedule of Basic Support Obligations is based, is contained in the February 6, 2003 report of Policy Studies, Inc., entitled Economic Basis for Updated Child Support Schedule, State Of Arizona.~~

~~1.A.~~ **PURPOSES**

~~A.~~ 1. To establish a standard of support for children consistent with the reasonable needs of children and the ability of parents to pay.

~~B.~~ 2. To make child support orders consistent for persons in similar circumstances-
AND SET CHILD SUPPORT AMOUNTS BASED ON THE FACTORS IN A.R.S. §25-320.

~~C.~~ 3. To give parents and courts guidance in establishing child support orders and to promote settlements.

~~D.~~ 4. To comply with state law (Arizona Revised Statutes (A.R.S.) Section §25-320) and federal law (42 United States Code, Section §651 et seq., 45 Code of Federal Regulations, Section §302.56) and ~~any~~ amendments **IF ANY** thereto.

~~2.B.~~ **PREMISES**

~~A.~~ 1. These guidelines apply to all natural children, whether born in or out of wedlock, and to all adopted children.

~~B.~~ 2. The child support obligation has priority over all other financial obligations; the existence of non-support-related financial obligations is generally not a reason for deviating from the guidelines.

~~C.~~ 3. The fact that a ~~custodial~~ parent **PAYS OR** receives child support does not mean that he or she may not also be entitled to spousal maintenance. If the court is establishing both child support and spousal maintenance, the court shall determine the appropriate amount of spousal maintenance first.

~~The receipt or payment of spousal maintenance shall be treated in accordance with sections 5.A and 6.A. The addition to or adjustment from gross income under these sections shall apply for the duration of the spousal maintenance award.~~

~~D.~~ 4. A parent's legal duty is to support his or her natural or adopted children. The "support" of other persons such as stepchildren or parents is ~~deemed voluntary~~ and is not a reason for an adjustment in the amount of child support determined under the guidelines.

~~E. In appropriate cases, a custodial parent may be ordered to pay child support.~~

~~F. Monthly figures are used to calculate the child support obligation. Any adjustments to the child support amount shall be annualized so that each month's child support obligation is increased or decreased in an equal amount, instead of the obligation for particular months being abated, increased or decreased.~~

~~EXAMPLE: At a child support hearing in a paternity action a custodial parent requests an adjustment for childcare costs (Section 9.B.1.). The parent incurs childcare costs of \$150 per month but only for nine months of the year. The adjustment for childcare costs must be annualized as follows: Multiply the \$150 monthly cost times the nine months that the cost is actually paid each year, for an annual total of \$1,350. Divide this total by 12 months to arrive at an annualized monthly adjustment of \$112.50 that may be added to the Basic Child Support Obligation when determining the child support order.~~

~~G. When determining the Basic Child Support Obligation under Section 8, the amount derived from the Schedule of Basic Child Support Obligations shall not be less than the amount indicated on the Schedule:~~

~~1. _____ For six children where there are more than six children.~~

~~2. _____ For the Combined Adjusted Gross Income of \$20,000 where the actual Combined Adjusted Gross Income of the parents is greater than \$20,000.~~

~~b.~~ 5. CHILD SUPPORT IS SET IN EQUAL MONTHLY AMOUNTS. THEREFORE, Monthly figures are used to calculate the child support obligation. AVERAGE MONTHLY FIGURES SHOULD BE USED WHEN INCOME OR EXPENSE AMOUNTS FLUCTUATE OVER THE COURSE OF A YEAR.

~~6. The Schedule of Basic~~ THE CHILD SUPPORT CALCULATION ~~Obligations is based on net income and converted to gross income, for ease of application. The impact of income taxes has been considered in the Schedule (Federal Tax including Earned Income Tax Credit, Arizona State Tax, and FICA).~~

3.C. PRESUMPTION

~~In any action to establish or modify child custody, and in any action to establish child support or past support or to modify child support, whether temporary or permanent, local or interstate, the amount resulting from application of these guidelines shall be the amount of child support ordered. These include, without limitation, all actions or proceedings brought under Title 25 of the Arizona Revised Statutes (including maternity and paternity) and juvenile court actions in which a child support order is established or modified. However, if application of the guidelines would be inappropriate or unjust in a particular case, the court shall deviate from the guidelines in accordance with Section 18-20.~~

THESE GUIDELINES APPLY TO ALL ACTIONS INVOLVING ESTABLISHMENT OF CURRENT OR PAST CHILD SUPPORT OR MODIFICATION OF CHILD SUPPORT. THE COURT SHALL ORDER THE AMOUNT DETERMINED UNDER THESE GUIDELINES ABSENT A DEVIATION PURSUANT TO SECTION IV(A).

IF THE PARENTS DO NOT HAVE SUBSTANTIALLY EQUAL PARENTING TIME, AND THE CALCULATION RESULTS IN THE PARENT WITH GREATER PARENTING TIME PAYING CHILD SUPPORT TO THE OTHER PARENT (REFLECTED BY A NEGATIVE NUMBER IN THE SUPPORT CALCULATION), NO CHILD SUPPORT SHALL BE ORDERED UNLESS:

1. THE GROSS MONTHLY INCOME OF THE PARENT WITH GREATER PARENTING TIME APPROACHES OR IS GREATER THAN 300% OF THE OTHER PARENT'S INCOME; AND

2. THE GROSS MONTHLY INCOME OF THE PARENT WITH GREATER PARENTING TIME APPROACHES OR IS GREATER THAN \$6,000; AND

3. THE OTHER PARENT'S PARENTING TIME APPROACHES OR IS GREATER THAN 130 DAYS.

D. THE ARIZONA CHILD SUPPORT GUIDELINES ARE BASED ON THE FINANCIAL RESOURCES AND NEEDS OF THE CHILD AND OF EACH PARENT, THE STANDARD OF LIVING THE CHILD WOULD HAVE ENJOYED IN A TWO-PARENT HOUSEHOLD, AND THE ALLOCATION OF PARENTING TIME, AS CONTEMPLATED BY A.R.S. SECTION 25-320(D). THEY REFLECT A SYSTEMATIC CONSIDERATION OF THE IMPACT OF PARENTAL SEPARATION ON THE PARENTS AND THEIR CHILDREN TO ACHIEVE OUTCOMES THAT ARE FAIR TO THE CHILD AND BOTH PARENTS.

II. Determining the Guideline Support Obligation

~~4. DURATION OF CHILD SUPPORT~~

~~Duration of child support is governed by Arizona Revised Statutes, Sections 25-320 and 25-501, except as provided in Arizona Revised Statutes, Section 25-648.~~

~~Upon entry of an initial or modified child support order, the court shall, or in any subsequent action relating to the child support order, the court may, establish a presumptive date for the termination of the current child support obligation. The presumptive termination date shall be the last day of the month of the eighteenth birthday of the youngest child included in the order unless the court finds that it is projected that the youngest child will not complete high school by age 18. In that event, the presumptive termination date shall be the last day of the month of the anticipated graduation date or age 19, whichever occurs first. The administrative income withholding order issued by the department or its agent in a title iv-d case and an order of assignment issued by the court shall include the presumptive termination date. The presumptive date may be modified upon changed circumstances.~~

~~An employer or other payor of funds honoring an order of assignment or an administrative income withholding order that includes the presumptive termination date and is for current child support only, shall discontinue withholding monies after the last pay period of the month of the presumptive termination date. If the order of assignment or administrative income withholding order includes current child support and arrearage payment, the employer or other payor of funds shall continue withholding the entire amount listed on the order of assignment or administrative income withholding order until further order.~~

~~For purposes of determining the presumptive termination date, it is further presumed:~~

~~A. That a child not yet in school will enter first grade if the child reaches age six on or before September 1 of the year in which the child reaches age six; otherwise, it is presumed that the child will enter first grade the following year; and,~~

~~B. That a child will graduate in the month of May after completing the 12th grade.~~

~~5. DETERMINATION OF THE GROSS INCOME OF THE PARENTS~~

NOTE: Terms such as "Gross Income" and "Adjusted Gross Income" as used in these guidelines do not have the same meaning as when they are used for tax purposes.

A. INCOME CONSIDERED

ONLY INCOME OF PERSONS HAVING A LEGAL DUTY OF SUPPORT SHALL BE TREATED AS INCOME UNDER THE GUIDELINES. FOR EXAMPLE, INCOME OF A PARENT'S NEW SPOUSE IS NOT TREATED AS INCOME OF THAT PARENT.

B. INCLUSIONS TO GROSS INCOME OF PARTIES

A. 1. Gross income includes income from any source, and may include, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits (subject to Section 26 IV(E)) ~~received directly by either parent and not on behalf of a child~~, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, recurring gifts, ~~and~~ prizes. Seasonal or fluctuating income shall be AVERAGED. ~~Income from any source which that is not continuing or recurring in nature need not be included as income for child support purposes.~~

2. Cash value ~~shall~~ ~~may~~ be assigned to in-kind or other non-cash benefits ~~or to recurring contributions from any sources that reduce living expenses.~~ ~~Seasonal or fluctuating income shall be annualized. Income from any source which is not continuing or recurring in nature need not necessarily be deemed gross income for child support purposes. Generally, the court should not attribute income greater than what would have been earned from full-time employment. Each parent should have the choice of working additional hours through overtime or at a second job without increasing the child support award. The court may, however, consider income actually earned that is greater than would have been earned by full-time employment if that income was historically earned from a regular schedule and is anticipated to continue into the future.~~

~~The court should generally not attribute additional income to a parent if that would require an extraordinary work regimen. Determination of what constitutes a reasonable work regimen depends upon all relevant circumstances including the choice of jobs available within a particular occupation, working hours and working conditions.~~

~~B. Gross income does not include sums received as child support or benefits received from means tested public assistance programs including, but not limited to, Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps and General Assistance.~~

~~C.~~ 3. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary REASONABLE expenses required to produce income. ~~Ordinary and necessary expenses do not include amounts determined by the court to be inappropriate for determining gross income for purposes of child support. Ordinary and necessary~~ REASONABLE expenses include one-half of the self-employment tax actually paid.

~~D.~~ 4. Expense reimbursements or benefits received by a parent in the course of employment or self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

~~E.~~ 5. If a parent is unemployed or working below full earning capacity, the court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a parent up to his or her earning capacity. If the reduction in income is voluntary but reasonable, the court shall balance THE BENEFITS OF THAT PARENT'S DECISIONS AGAINST THE FINANCIAL DETRIMENT, IF ANY, TO THE CHILD. ~~that parent's decision and benefits therefrom against the impact the reduction in that parent's share of child support has on the children's best interest. In accordance with Arizona Revised Statutes Section 25-320, income of at~~

~~least minimum wage shall be attributed to a parent ordered to pay child support. . IF THERE IS NO AVAILABLE INCOME INFORMATION THE COURT SHALL PRESUME THAT EACH PARENT IS CAPABLE OF EARNING AT LEAST THE APPLICABLE MINIMUM WAGE AND ATTRIBUTE THAT AMOUNT TO THE PARENT.~~ If income is attributed to the parent receiving child support, appropriate childcare expenses may also be attributed. HOWEVER, ~~the~~ court may decline to attribute income to either parent. Examples of cases in which it may be inappropriate to attribute income include, but are not limited to, the following circumstances:

- ~~1-~~ **a.** A parent is physically or mentally disabled,
- ~~2-~~ **b.** A parent is engaged in reasonable career or occupational training to establish basic skills or reasonably calculated to enhance earning capacity,
- ~~3-~~ **c.** ~~Unusual~~ Emotional or physical needs of a natural or adopted child require that parent's presence in the home, or
- ~~4-~~ **d.** The parent is a current recipient of Temporary Assistance to Needy Families. **A parent is incarcerated.**

~~F. — Only income of persons having a legal duty of support shall be treated as income under the guidelines. For example, income of a parent's new spouse is not treated as income of that parent.~~

~~G. — The court shall not take into account the impact of the disposition of marital property except as provided in Arizona Revised Statutes Section 25-320.A.6: ("...excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.") or to the extent that such property generates income to a parent.~~

~~H. — The Schedule of Basic Child Support Obligations is based on net income and converted to gross income for ease of application. The impact of income taxes has been considered in the Schedule (Federal Tax including Earned Income Tax Credit, Arizona State Tax, and FICA).~~

C. EXCLUSIONS FROM GROSS INCOME

1. Gross income does not include sums received as child support or benefits received from means-tested public assistance programs including, but not limited to, Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps and General Assistance.

2. Except as otherwise provided in section 5.b, any Gross income does not include benefits received directly, and not on behalf of a child, by either the custodial parent or the parent paying child support as a result of his or her own contributions, shall be included as part of that parent's gross income ON BEHALF OF A CHILD.

3. EACH PARENT SHOULD HAVE THE CHOICE OF WORKING ADDITIONAL HOURS THROUGH OVERTIME OR AT A SECOND JOB WITHOUT increasing AFFECTING THE CHILD SUPPORT AWARD. Generally, the court should not attribute INCLUDE income greater than what would have been earned from full-time employment. The court may, however, consider INCLUDE income actually earned that is greater than would have been earned by full-time employment if that income was historically earned from a regular schedule and is anticipated to continue into the future. The court should generally not attribute INCLUDE additional income to a parent IF EARNING that ADDITIONAL INCOME would require an extraordinary work regimen. Determination of

what constitutes an ~~reasonable~~ EXTRAORDINARY work regimen depends upon all relevant circumstances including the choice of jobs available within a particular occupation, working hours and working conditions.

6.D. ADJUSTMENTS TO GROSS INCOME

~~For purposes of this section, “children of other relationships” means natural or adopted children who are not the subject of this particular child support determination.~~

~~Adjustments to gross income for other support obligations are made as follows:~~

~~A.1.~~ The court-ordered amount of spousal maintenance resulting from this or any other marriage, if actually being paid, shall be deducted from the gross income of the parent paying spousal maintenance. The court-ordered amount of spousal maintenance resulting from this or any other marriage, if actually being paid, shall be added to the gross income of the parent receiving spousal maintenance. Court-ordered arrearage payments shall not be included as an adjustment to gross income.

~~B.~~ The court ordered amount of child support for children of other relationships, if actually being paid, shall be deducted from the gross income of the parent paying that child support. Court ordered arrearage payments shall not be included as an adjustment to gross income.

~~C.~~ An amount shall be deducted from the gross income of a parent for children of other relationships covered by a court order for whom they are the custodial parent. The amount of the adjustment shall be determined by a simplified application of the guidelines (defined in example below).

~~D.2.~~ An amount (MAY/SHALL) be deducted from the gross income of a parent for support of natural or adopted children of other relationships. not covered by a court order. The amount of any adjustment shall not exceed the amount arrived at by a simplified application of the guidelines (defined in example below). For purposes of this section, “children of other relationships” means natural or adopted children of either party who are not the subject of this particular child support determination. The deducted amount shall be:

a. The amount ordered to be paid if actually paid by that parent. Court-ordered arrearage payments shall not be included as an adjustment to gross income; or,

b. An amount calculated by the court not to exceed the amount arrived at by simplified application of the Child Support Guidelines if the parent is not ordered to pay child support.

EXAMPLE: ~~A parent having gross monthly income of \$2,000 supports natural or adopted minor child who is not the subject of the child support case before the court and for whom no child support order exists. To use the Simplified Application of the Guidelines, locate \$2,000 in the Combined Adjusted Gross Income column of the Schedule. Select the amount in the column for one child, \$420. The parent's income may be reduced up to \$420, resulting in an Adjusted Gross Income of \$1,580.~~

3. Reasonable childcare costs for the child(ren) covered by the order shall be deducted from the gross income of the party who pays the cost if the childcare is necessary for gainful employment or for training and education reasonably necessary to obtain gainful employment. If the childcare expense varies per month, the average monthly expense shall be deducted.

~~EXAMPLE: At a child support hearing in a paternity action a custodial parent requests an adjustment for childcare costs (Section 9.B.1.). The~~ A parent incurs childcare costs of \$150 per month but only for nine months of the year. The adjustment for childcare costs must be ~~annualized~~ **averaged** as follows: Multiply the \$150 monthly cost times the nine months that the cost is actually paid each year, for an annual total of \$1,350. Divide this total by 12 months to arrive at ~~an annualized~~ **a monthly adjustment of to income of \$113.** ~~\$112.50 that may be added to the Basic Child Support Obligation when determining the child support order.~~

7.E. DETERMINING THE ADJUSTED GROSS INCOME OF THE PARENTS

Adjusted ~~G~~**g**ross ~~I~~**i**ncome is gross income minus the adjustments provided in Section 6 ~~II(B)~~ of these guidelines. The ~~A~~**a**djusted ~~G~~**g**ross ~~I~~**i**ncome for each parent shall be established. ~~These amounts shall be added together. The sum is the Combined Adjusted Gross Income.~~

8. DETERMINING THE BASIC CHILD SUPPORT OBLIGATION

8.F. CASES BEYOND THE SCOPE OF THE GUIDELINE CALCULATOR

~~Locate the income closest to the parents' Combined Adjusted Income figure on the Schedule of Basic Child Support Obligations and select the column for the number of children involved. This number is the Basic Child Support Obligation. The child support guideline calculator goes up to six~~ **four** ~~children and an individual adjusted gross income of \$20,000~~ **12,000** ~~per month. If there are more than six~~ **four** ~~children, the amount derived from the Schedule Of Basic Support Obligations~~ **calculator** ~~for six~~ **four** ~~children shall be the presumptive amount. The party seeking a greater sum shall bear the burden of proof that the needs of the children require a greater sum. If the combined adjusted gross income of the either parties~~ **y** ~~is greater than \$20,000~~ **12,000** ~~per month, the amount set forth for combined adjusted gross income of \$20,000 shall be the presumptive Basic Child Support Obligation in calculating child support, that party's income is presumed to be \$12,000 per month. The amount resulting from this calculation shall be the presumptive child support order. If a~~ ~~The party seeks~~ **a sum greater than this presumptive amount shall a higher support order for more than four children or income of the other party exceeds \$12,000 per month, that party bears** ~~the burden of proof to establish that a higher amount is in the best interest of the children, taking into account such factors as the standard of living the children would have enjoyed~~ **IN A TWO-PARENT HOUSEHOLD,** ~~the needs of the children in excess of the presumptive amount, consideration of any significant disparity in the respective percentages of gross income for each party and any other factors which, on a case by case basis, demonstrate that the increased amount is appropriate.~~

9.G. DETERMINING THE TOTAL CHILD SUPPORT OBLIGATION ADDITIONS TO SUPPORT

DISCUSS ESTABLISHING AN INTERIM COMMITTEE TO SERVE

Discussion was tabled.

DISCUSS FINAL REPORT

The Committee suggested holding a telephonic meeting for June 2, 2009 from 12:15 – 1:30PM to discuss any further comments regarding the draft guidelines before their informational presentation to Arizona Judicial Council (AJC) in June. The Committee also suggested holding a meeting in August to finalize the guidelines to present for a recommendation from Arizona Judicial Council (AJC) in October 2009.

DISCUSS NEED FOR FURTHER MEETINGS

This discussion was tabled.

CALL TO THE PUBLIC

Public did not comment.

ADJOURN

The meeting was adjourned at 3:50 p.m.